

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

APR 26 2013

Roger L. Couch, Circuit Court Judge

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S.C. SUPREME COURT

Opinion No. 27230 (S.C. Sup. Ct. filed March 6, 2013)  
Appellate Case No. 2010-180906

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Michael D. Crisp, Jr., Employee, ..... Petitioner,

vs.

SouthCo, Inc., Employer, and Pennsylvania  
National Mutual Casualty Insurance Co.,  
Carrier, ..... Respondents.

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**REPLY SUPPORTING REHEARING**

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This reply is filed pursuant Rule 240(f) of the South Carolina Appellate Court Rules, which covers motions and petitions generally.

The respondents are correct when they say that much of the argument and authorities presented in the petition for rehearing were not previously presented to this Court. The reason why should be obvious: Mr. Crisp was not aware of the pending *Sparks* case, as it was handed down the same day as *Crisp*, nor was he aware of the fact that the Court would undertake to clarify the definition of what constitutes “physical brain damage” as that term is used in the

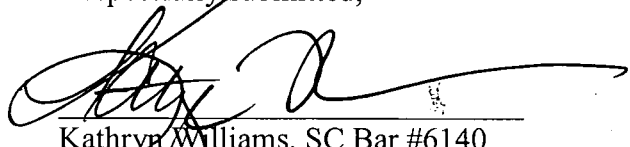
Worker' Compensation Act. This is why the respondents' accusation that Mr. Crisp is "re litigating" or "re arguing" the merits makes no sense. These issues were not a part of this case until the Court issued its decision.

What is more, the Court's decision includes a characterization of Mr. Crisp's argument that is demonstrably inaccurate; Mr. Crisp has never argued that the mere presence of any physical brain injury or damage, regardless of degree, triggers the operation of the lifetime benefits statute. At no point in their return do the respondents' answer this basis of the petition.

Nothing could be more subversive of error preservation principles than denying a party the opportunity to contest the basis for a decision. As the words of this Court's decision indicate, the decision to remand was based on reasoning that neither party offered — it was not offered by the petitioner, and it was not offered by the respondent. Instead, this Court's decision relied extensively on its contemporaneous decision in *Sparks*. Summarily dismissing Mr. Crisp's arguments with respect to that decision does violence to error preservation principles; it does not honor them.

Mr. Crisp's petition contains a correct characterization of this Court's decisions in *Sparks* and his own case. The petition also accurately summarized how practitioners have traditionally viewed the law with respect to "physical brain damage," and it further proposed something that should be relatively non-controversial: lifetime benefits in a brain injury case should be determined by the test the employer proposed in *Sparks*. This is the same test outlined in section 42-9-10(C) and described in the decision of the Court of Appeals in *Pearson*. On this point, there should not be much disagreement.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kathryn Williams', written over a horizontal line.

Kathryn Williams, SC Bar #6140

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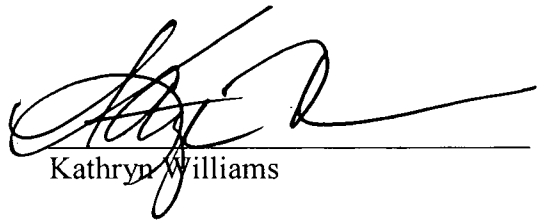
CERTIFICATE OF SERVICE

This is to certify that the undersigned did cause petitioner Michael D. Crisp, Jr.'s REPLY SUPPORTING REHEARING to be served by first-class U.S. Mail, proper postage pre-paid, on the 24 day of April, 2013, as follows:

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